

## **CHAPTER 5**

### **LAYOFF FOR REASONS OF BUDGET OR PROGRAM**

#### **5.01. Layoff Defined**

Layoff is the termination of an academic staff member's employment because of a *funding loss* or a *budget or program decision* (as defined in ASPP 1.03) either prior to the end of the appointment or when proper notice of nonrenewal under ASPP 3.05 cannot be given. If proper notice of nonrenewal has been given, the provisions of this chapter do not apply. Layoff is neither dismissal for cause (ASPP 6) nor nonretention of a probationary appointee (ASPP 4).

The provisions of this chapter do not apply to rehired annuitants. If it becomes necessary to terminate an appointment of this type prior to the end date of the appointment, prior approval by the dean, director or designee is required, and a minimum of 2 weeks written notice must be provided.

#### **5.02. Employer's Responsibility in Making a Layoff Decision**

In carrying out its mission and goals, the university retains the right to determine the direction and scope of its programs—including the right to reduce staff levels through layoff because of a funding loss or a budget or program decision that requires a program to be discontinued, curtailed, modified or redirected. When a layoff will occur in an operational area with two or more academic staff employees, it shall be implemented on the basis of years of UW-Madison academic staff service (as defined in ASPP 1.03), except as follows. The presumption in favor of years of service shall not apply when program needs dictate other considerations such as the need to maintain specific expertise or responsibility levels within a program or operational area.

#### **5.03. Approval of a Layoff Decision**

A layoff decision requires prior approval. The supervisor must submit a written statement describing the facts and circumstances justifying the layoff. This statement must be approved by the employing unit and dean, director, or designee and the Academic Personnel Office. Upon receipt of this approval, the employing unit shall notify the employee in writing of the layoff (see ASPP 5.04.A).

If a proposed layoff is based on a substantial redirection of program activity without significant funding loss, the chancellor or designee may establish, at his or her discretion, an ad hoc committee to review the layoff proposal. Affected employees will be notified whether or not there will be a review. The ad hoc committee shall include academic staff employed within the program or activity that will be affected by the layoff decision. This committee will make a recommendation to the chancellor or designee, who must approve the recommendation before the layoff notice can be issued.

**5.04. Notice**

- A. *Written Notice.* An academic staff member with a fixed-term or probationary appointment shall be given written notice of layoff by the immediate supervisor, principal investigator, department chair or unit head only after approval of the layoff decision by the dean, director, or designee and the Academic Personnel Office. At the same time, copies of this notice shall be sent to the department chair or unit head, the dean or director, and the Academic Personnel Office. An academic staff member with an indefinite appointment shall be given written notice by the dean or director. The written notice shall inform the employee of the reasons for the layoff, the effective date of the layoff, and his or her appeal rights, and shall include a copy of ASPP 5 and 9.
  
- B. *Minimum Notice Period.*

Minimum Notice Period for Layoff of Fixed-Term Renewable and Probationary Appointees

Years of Academic Staff Service	Minimum Layoff Notice Period in Months For Funding Loss	Minimum Layoff Notice Period in Months For Budget or Program Decision
Fewer than 2	1	2
At least 2 but fewer than 6	2	3
At least 6 but fewer than 10	3	5
10 or more	4	6

Minimum Notice Period for Layoff of Rolling-Horizon and Indefinite Appointees

Type of Appointment	Minimum Layoff Notice Period in Months For Funding Loss	Minimum Layoff Notice Period in Months For Budget or Program Decision
Rolling-Horizon	6	12
Indefinite	24	24

In the case of a financial emergency as defined in UWS 5.02, which can be declared only by the Board of Regents, the minimum layoff notice period for indefinite appointees may be reduced to 12 months and the minimum layoff notice period for fixed-term rolling-horizon appointees being laid off for budget or program reasons may be reduced to six months.

When two or more rolling-horizon appointees in the same operational area will be laid off, and if more than the minimum required layoff notice periods can be given, employees holding longer-term rolling-horizon appointments shall receive notice periods equal to or longer than those given to employees with shorter-term rolling-horizon appointments.

### **5.05. Right to Appeal**

An academic staff member who is laid off has the right to appeal when the staff member believes that there are no valid grounds for layoff (see ASPP 5.01); or that another academic staff member should have been laid off instead; or when the layoff is arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP when the alleged violation is substantive enough to influence the decision under review. An arbitrary or capricious layoff decision is one that is made without a basis in fact or for inconsequential or unsubstantial reasons when the needs of the program have not changed, funds for the position are available, and performance has been satisfactory. A pending appeal of a layoff decision does not extend the appointment.

### **5.06. Appeal Process**

- A. *Request for Review by the Dean or Director.* The academic staff member must submit a written request for review of a layoff decision to the dean or director within 20 working days of receipt of the written notice of layoff.
- B. *Review by the Dean or Director.* When a review is requested, the dean, director, or designee shall meet with the academic staff member, who shall have an opportunity to present facts and circumstances concerning the layoff. The dean, director, or designee shall conduct an objective review of all pertinent facts and circumstances and notify the employee, the department chair or unit head, and the Secretary of the Academic Staff of his or her decision in writing within 20 working days following the meeting. If there is no decision by the dean, director, or designee regarding the written request for review within the designated time period, the employee can appeal to the Academic Staff Appeals Committee within 20 working days of the expiration of the designated period.
- C. *Appeal to the Academic Staff Appeals Committee.* The academic staff member shall have 20 working days from receipt of the dean, director, or designee's decision to file a written appeal with the Secretary of the Academic Staff, which will forward the files to the Academic Staff Appeals Committee, the Academic Personnel Office, and the dean, director, or designee within five working days. The dean, director, or designee shall provide the employing department and employee's supervisor with a copy of the academic staff member's appeal. The Academic Staff Appeals Committee shall conduct a hearing in accordance with ASPP 9.

- D. *Access to the Evidence.* The appellant shall have the right to review all evidence the employer used to make the layoff decision. All additional information the employer uses or plans to use to support the decision shall also be provided to the appellant in a reasonable time prior to a hearing. Likewise, the employer shall have the right to review all materials to be presented by the appellant. The exchange shall take place within a reasonable time prior to a hearing.
- E. *Burden.*
1. *Fixed-Term Appointments.* For layoffs of fixed-term appointees, the employer's burden shall be to show by a preponderance of the evidence (i) that the layoff is in fact the result of funding loss or a budget or program decision requiring program discontinuance, curtailment, modification, or redirection, (ii) that another academic staff member should not have been laid off instead, and (iii) that the layoff is not arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP.
  2. *Indefinite Appointments.* For layoffs of indefinite appointees, refer to UWS 12.05(5) for details about the requirement to establish a prima facie case.
- F. *Notification and Disposition.* The Academic Staff Appeals Committee shall forward its findings of fact with a recommendation to the chancellor or designee and shall send a copy to the Academic Personnel Office, dean or director, department chair or unit head, and employee. Within 30 working days of receipt of the Committee's recommendation, the chancellor or designee shall implement the recommendation or give the appellant and the Committee written reasons for any decision to modify the recommendation. The employee, department chair or unit head, dean or director, Academic Personnel Office, and the Committee shall be notified of the decision of the chancellor or designee, which is final. If the decision of the chancellor or designee has not been issued within 30 working days, the recommendation of the Academic Staff Appeals Committee becomes final, except that an indefinite appointee may request a review by the Board of Regents under UWS 12.05(8).
- G. *Time Limits.* Steps in the appeal process must be initiated and completed within the designated time periods except when modified by mutual consent. If the employee fails to initiate the next step in the appeal process within the designated time period, the appeal will be considered resolved by the decision at the last completed step.
- H. *Representation.* The presence of a representative or other third party designated by the employee is permitted at any stage during the appeal process.

### **5.07. Joinder of Layoff Appeals**

If the layoff of two or more members of the academic staff arises from the same or similar situation in a single operational area, the academic staff members who appeal or the dean or director may request joinder of cases for hearing. The Academic Staff Appeals Committee shall consider joinder before taking up the merits of any case. In addition, the Academic Staff Appeals Committee may join the cases on its own motion.

### **5.08. Layoff Status Defined**

Layoff status shall be defined as the three-year period starting with the effective date of layoff. To initiate layoff status, the individual must register with the Academic Personnel Office. To maintain layoff status, the individual shall notify that office at least quarterly regarding employment status, or whenever a change of address or employment status occurs. Layoff status ends automatically when an individual accepts an alternative appointment that is not temporary, fails to accept an appropriate alternative appointment, resigns, or fails to notify the Academic Personnel Office of changes of address or employment status. The primary test in the determination of appropriate alternative appointment is not salary level but comparability of the qualifications necessary and skill level required.

### **5.09. Reappointment Rights and Referral Priority**

Pursuant to Wis. Stats. 36.21 and UWS 12.09, 12.10 and 12.11, in an operational area where layoffs have occurred in the past three years, no person may be employed to perform reasonably comparable duties to those of the staff member laid off without first offering an appointment to the staff member on layoff status without loss of rights or status including salary rate. The head of each operational area is responsible for notifying laid-off academic staff members of their right to reappointment within that operational area. To ensure compliance, a record of laid-off academic staff members by operational area shall be kept in the Academic Personnel Office.

The UW-Madison shall devote its best efforts to securing alternative appointments in positions for which staff laid off under this chapter are qualified. The head of the operational area responsible for the layoff is encouraged to identify and inform the employee of any comparable positions in related operational areas. An academic staff member on layoff status may be hired without open recruitment into an academic staff position in another unit at the discretion of that department or unit. Units are encouraged to provide released time to academic staff members being laid off for such purposes as retraining, job interviews, career counseling, or job searches. Members of the academic staff on layoff status or on notice of layoff shall have referral priority rights to all academic staff vacancies for which they may reasonably qualify. Such referrals shall be made by the Academic Personnel Office prior to posting of position vacancies. Prospective employers must consider these persons before consideration of other referrals, if any, and before the commencement of open recruiting, and upon request must give written reasons to any referred academic staff member on layoff status to whom

employment is refused.